



**INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
WABASH COLLEGE**

***A.B. v. State of Indiana***

**Appeal from:**  
Putnam Circuit Court  
Greencastle  
  
The Honorable Matthew  
Headley, Judge

**Oral Argument:**  
Tuesday, February 27, 2007  
3:00—4:00 p.m.  
30 minutes each side

***In this case, the Indiana Court of Appeals is asked to examine five questions in different areas of law:***

**JURISDICTION**

Did the juvenile court acquire jurisdiction over A.B. when the court did not expressly approve the filing of the delinquency petition until after the State filed the petition?

**PROCEDURE**

Is the delinquency petition facially defective because the charging information failed to provide a sufficiently definite statement of the facts?

**CRIMINAL LAW**

**HARASSMENT**

Did the State prove beyond a reasonable doubt that A.B. intended to harass Shawn Gobert, that she intended to make any harassing communication to him, and that the language used in her emails was obscene, indecent, or profane?

**PROTECTED POLITICAL SPEECH**

Can the messages posted by A.B. on a publicly accessible webpage, criticizing the principal of a public school and school policy, be characterized as protected political speech?

**DOUBLE JEOPARDY**

Did the State violate A.B.'s double jeopardy protection under the United States Constitution when she was subjected to multiple prosecutions because the delinquency petition alleged the same offenses under multiple counts?

*A.B. v. State of Indiana***CASE SYNOPSIS****Facts and Procedural History**

In February of 2006, Shawn Gobert, principal of the Greencastle Middle School, was informed by some of his students that a derogatory webpage concerning Matthew Taylor, the assistant principal, had been created on the internet. When Gobert and Taylor investigated this information, they not only found the webposting concerning Taylor, but also uncovered a webpage on myspace.com purporting to have been created by Gobert.

In order to view the myspace webpage on Gobert, Gobert removed the restriction on his school computer that prevented him access to the site. However, the webpage was created with a private profile and only persons accepted as friends by the creator of the webpage were allowed full access to the page and its comments. Later, it was discovered that R.B. had created the Gobert myspace webpage, purporting to be Gobert, and had invited several of her friends, including A.B., to access the page and view the listings. A.B., knowing that R.B. was the creator of the webpage, made several derogatory postings on the site. On February 15, 2006, A.B. posted the following comment:

Hey you piece of greencastle shit.  
What the fuck do you think of me  
[now] that you can[t] control me?  
Huh? Ha ha ha guess what I'll  
wear my fucking piercings all day  
long and to school and you can[t]  
do shit about it! Ha ha fucking ha!  
Stupid bastard!

Oh and kudos to whomever made  
this ([I'm] pretty sure I know  
who).  
Get a background.

The next day, she posted: "die . . . gobert. . . die." Separate from the webpage created by R.B., A.B. created a publicly accessible group on myspace under the group name "Fuck Mr. Gobert and GC Schools." Gobert testified that he never received these postings directly, but only viewed them on the respective websites after gaining access to them.

On March 2, 2006, the State filed a delinquency petition alleging A.B. committed acts that, if committed by an adult, would have constituted identity deception, a Class C felony, and harassment, a Class B misdemeanor. On March 10, 2006, the juvenile court approved the filing of the petition. Thereafter, on May 15, 2006, the State amended its petition alleging eight counts of harassment, a Class B misdemeanor, and one count of identity theft, a Class D felony. At the commencement of the fact-finding hearing, held on May 22, 2006, the State dismissed two counts of harassment and the single count of identity theft. On June 27, 2006, the juvenile court issued its Order adjudicating A.B. to be a delinquent child. As a result of its finding, the juvenile court placed A.B. on nine months of probation combined with various conditions.

## Case Synopsis (*continued*)

### Parties' Arguments

On appeal, A.B. asserts four counts of error by the juvenile court. First, A.B. disputes the juvenile court's jurisdiction over her as the court did not approve the filing of the petition of delinquency prior to the State actually filing the petition. Next, she contends that the State's petition was facially deficient as it failed to identify the person to whom the purported harassing emails were sent and failed to enumerate the specific acts used to gain access to a computer network. As such, she maintains that she was not afforded sufficient notice to defend against the charges. A.B.'s main argument revolves around the State's burden of proving beyond a reasonable doubt that she committed harassment. In this light, she asserts that she did not communicate, or intended to communicate, to Gobert any obscene, indecent, or profane messages. Furthermore, A.B. alleges that her messages, made in a public forum and criticizing Gobert, a state actor, should be characterized as political speech protected by the First Amendment of the United States Constitution and Article I, Section 9 of the Indiana Constitution. Lastly, A.B. claims that the State violated the prohibition against double jeopardy by subjecting her to multiple prosecutions because the delinquency petition alleged the same offenses under multiple counts.

In response, the State requests this court to affirm the Order of the juvenile court on all counts. Specifically, the State asserts that A.B. waived any claim that the juvenile court lacked jurisdiction because she submitted herself to the court's jurisdiction prior to raising the jurisdictional objection. Also, the State denies that its petition was facially defective because the petition's form and content provided sufficient notice of the charges filed against A.B. With regard to the harassment charge, the State contends that because A.B. posted her messages on a website that could be accessed by others, she did not intend her postings, which contained threatening and indecent language, to be private. Furthermore, the State maintains that A.B.'s internet transmission was sufficient to constitute an indirect communication to Gobert. Considering the nature of A.B.'s emails, the State disclaims that the postings should be protected as political speech. Lastly, the State asserts A.B.'s double jeopardy claim to be without merit as only the act of imposing multiple punishments for the same offense is prohibited under the Constitution.

**Opinion in this case expected:**  
By late spring 2007

*Dr. Timmerman will be informed when the Court has issued an opinion in this case. Check the Court's website to read the opinion.*

**For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>**

**Or contact:**  
Maura Pierce  
Community Liaison  
Indiana Court of Appeals  
115 W. Washington Street  
Suite 1270 South  
Indianapolis,  
IN 46204  
(317) 234-4859  
E-mail:  
[mpierce@courts.state.in.us](mailto:mpierce@courts.state.in.us)

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## TODAY'S PANEL OF JUDGES

### **Hon. James S. Kirsch (Marion County), Presiding**

- Judge of the Court of Appeals since March 1994
- Chief Judge of the Court since March 2004

**James S. Kirsch** was appointed to the Court of Appeals in March 1994 and was elected Chief Judge in March 2004. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J. D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

He served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and a former member of the Board of Visitors of the Indiana University School of

Law-Indianapolis. He is a past-president of the United Way/Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association.

Chief Judge Kirsch is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation. He is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch, who was retained on the Court by election in 1996 and 2006, is married and has two children.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

**Today's oral argument is the 177th case the Court of Appeals has heard "on the road" since early 2000.**

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

## TODAY'S PANEL OF JUDGES

### **Hon. Patricia A. Riley (Jasper County)**

- Judge of the Court of Appeals since January 1994

**Patricia A. Riley**, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994.

A native of Rensselaer, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993.

Judge Riley is a former associate professor at St. Joseph's College in Rensselaer and is currently an adjunct professor of law at the Indiana University School of Law—Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



## TODAY'S PANEL OF JUDGES

### **Hon. Margret G. Robb (Tippecanoe County)**

- Judge of the Court of Appeals since July 1998

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender.

Judge Robb chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar

Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YMCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the U.S. Navy.

## ATTORNEYS FOR THE PARTIES

**For Appellant, A.B.:**  
**James R. Recker**  
**Putnam County Chief**  
**Public Defender**  
**Greencastle**

**James R. Recker** earned his J.D. from the Indiana University School of Law—Indianapolis in 2000. He is an attorney engaging in private practice in Indianapolis, principally handling criminal defense and appeals. Since 2000 he has also been a Public Defender in the Putnam Circuit Court; the Indiana Public Defender Council named him to his current post as Chief Public Defender of Putnam County.

Mr. Recker served in the United States Air Force from 1964 to 1968. He received a B.S. in Finance from Purdue University in 1973, and from his graduation until 2000, he was a commercial banker serving in various capacities, including Vice President of several regional commercial banks in Indiana and Wisconsin.

His e-mail address is james-recker@justice.com.

## AMICUS BRIEFS

*A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.*

- There are no amicus filings in this case.

## ATTORNEYS FOR THE PARTIES

**For Appellee, State of Indiana:**  
**Cynthia Ploughe**  
**Deputy Attorney General**  
**Indianapolis**

**Cynthia Ploughe** is a native of Tipton County who originally had no intention of attending college. After graduating from Tipton High School, she moved to Washington, D.C. to work for the Federal Bureau of Investigation, which trained her to be a fingerprint examiner. Four years later, she returned to Indiana, and after encouragement from a family friend, she began her collegiate studies at Indiana University in Kokomo. She eventually transferred to Ball State University, earning a bachelor's degree in 1986 with a major in political science and a minor in journalism.

Following graduation, Ms. Ploughe entered Indiana University Law School in Indianapolis and began working at the Office of the Attorney General at the end of her first year. In 1990, after graduating from law school and passing the Indiana bar exam, she was sworn in as a Deputy Attorney General. She conducted research and responded to briefs submitted by defendants in cases such as murder, child molestation, and theft. She regularly presented

cases in oral argument before the Indiana Supreme Court and the Indiana Court of Appeals.

In 1997, she left the Attorney General's office to become a deputy prosecutor in Marion County. She first prosecuted misdemeanor crimes — minor drug possession, operating a vehicle while intoxicated, prostitution, shoplifting — but soon began prosecuting felony offenses, including major drug cases, such as dealing cocaine and methamphetamine.

Ms. Ploughe returned to the Indiana Attorney General's office in 2001 and became Section Chief of Criminal Appeals in 2004. She supervises more than a dozen attorneys and acts as an appellate liaison for Indiana's 90 elected prosecutors and their deputies. Prosecutors who obtain a trial court ruling they don't like confer with Ms. Ploughe to determine whether the State will appeal. If a case is appealed, Ms. Ploughe compiles the case record and prepares the Brief of Appellant.